

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHARLES RUSSELL TWIST,	:		
	:		
Plaintiff,	:		
	:		
v.	:	Civil Action No.:	01-1163 (RMU/JMF)
	:		
JOHN ASHCROFT, Attorney General,	:	Document Nos.:	31
	:		
Defendant.	:		

ORDER

ADOPTING REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

It is this 2nd day of August 2004,

ORDERED that the report and recommendation submitted to this court on June 22, 2004, by Magistrate Judge Facciola and the findings made therein are **HEREBY ADOPTED** in total **GRANTING** the defendant's motion for summary judgment. The court notes that the plaintiff's legal argument in his objections to the Magistrate Judge's Reports and Recommendations, as opposed to his *ad hominem* attacks, were duly considered by the Magistrate Judge, as they are repetitious of the plaintiff's opposition to the defendant's motion for summary judgment. Nevertheless, in addition to adopting the report and recommendation as this court's opinion, the court furthers its opinion as follows.

As Magistrate Judge Facciola clearly presented in his Report and Recommendation on June 22, 2004, the plaintiff, to avoid summary judgment, must establish that the *Vaughn* index is "insufficient to permit the court to ascertain whether the FOIA exemptions have been properly claimed." Report and Recommendation on Def.'s Mot. for Summ. J. ("Report and Recommendation") at 3. In the plaintiff's objections to the report and recommendation and opposition to the plaintiff's motion for summary judgment, he attempts to avoid summary judgment by demonstrating the defendant's bad faith in failing to produce OPR reports.

Specifically, the plaintiff alleges the existence of “periodic status reports” from the OPR, which are not listed in the *Vaughn* index, nor exempt from production. Pl.’s Opp’n to Report and Recommendation (“Pl.’s Opp’n to Rep.”) at 3-4; Pl.’s Opp’n to Mot. for Summ. J. (“Pl.’s Opp’n”) at 20.

The plaintiff’s assertions alone do not establish that the *Vaughn* index is insufficient because of the defendant’s bad faith. *SafeCard Servs., Inc. v. Sec. & Exch. Comm’n*, 926 F.2d 1197, 1200 (D.C. Cir. 1991); *see also Ground Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 771 (D.C. Cir. 1981)). The court recognizes that while an agency’s affidavits are presumed to be in good faith, a plaintiff can rebut this presumption with evidence of bad faith. *Id.* But such evidence cannot be comprised of “purely speculative claims about the existence and discoverability of other documents.” *SafeCard Servs., Inc.*, 926 F.2d at 1200 (citing *Ground Saucer Watch, Inc.*, 692 F.2d at 771).

Perusal of the *Vaughn* index, the court record, and the defendant’s “Shaheen Memorandum” attachment, Pl.’s Opp’n to Rep. Ex. 1; Pl.’s Opp’n at 20, sheds no light on the existence of these documents. This court cannot embark on a time-consuming and costly goose chase in pursuit of phantom reports. The plaintiff bears the burden to show the existence of these documents; he failed to meet this burden. *Albuquerque Pub. Co. v. United States Dep’t of Justice*, 726 F. Supp. 851, 860 (D.D.C. 1989). Accordingly, the court grants the defendant’s motion for summary judgment.

SO ORDERED.

RICARDO M. URBINA
United States District Judge